

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARTIN HAGOPIAN,

Plaintiff,

CIVIL ACTION NO. 05-CV-74025-DT

vs.

DISTRICT JUDGE GEORGE CARAM STEEH

DAVID SMITH, BUREAU
OF HEALTH CARE SERVICES,
GEORGE PRAMSTALLER, CMS,
INC., LIZ KLEINHARDT, YVONNE
GARDNER BROWN, JANE DOE, and
JOHN DOE,

MAGISTRATE JUDGE MONA K. MAJZOUN

Defendants.

CORRECTED ORDER DENYING AS MOOT PLAINTIFF'S MOTION TO
SUPPLEMENT RESPONSE TO DEFENDANTS' MOTION
TO DISMISS (DOCKET NO. 129) AND DENYING AS MOOT PLAINTIFF'S MOTION
TO PROCEED (DOCKET NO. 130)

This matter comes before the Court on two motions. The first is Plaintiff's Motion to Supplement Response to Defendants' Motion to Dismiss filed on October 16, 2009. (Docket no. 129). The second is Plaintiff's Motion to Proceed filed on October 13, 2009. (Docket no. 130). Defendants have not responded to the motions and the time for responding has expired. All pretrial matters have been referred to the undersigned for decision. (Docket no. 11). The Court dispenses with oral argument on the motions pursuant to E.D. Mich. LR 7.1(e). These matters are now ready for ruling pursuant to 28 U.S.C. § 636(b)(1)(A).

This is a *pro se* civil rights action filed by a Michigan state prisoner pursuant to 42 U.S.C. § 1983. Plaintiff alleges that Defendants failed to provide proper treatment for his diabetic macular

retinopathy and macular edema which resulted in his losing sight in his left eye. On July 1, 2009 Defendants Kleinhardt and CMS, Inc. filed a Motion for Summary Judgment in accordance with this Court's scheduling order. (Docket no. 119). Plaintiff has not filed a response to the motion. On September 18, 2009 Defendants filed a Motion to Dismiss for Failure to Prosecute. (Docket no. 127). Defendants assert in their motion that Plaintiff's failure to respond to the Defendants' Motion for Summary Judgment or seek additional time in which to respond, constitutes sufficient grounds for dismissal for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

On November 25, 2009, Defendants filed a Motion for Leave to File an Amended Dispositive Motion. (Docket no. 131). This Court granted that motion. (Docket no. 137). Defendants filed an Amended Motion to Dismiss and Motion for Summary Judgment on November 25, 2009. (Docket no. 133). The amended motion completely replaces the original Motion for Summary Judgment filed on July 1, 2009. As a result, this Court recommended that the Defendants' original Motion for Summary Judgment and the Defendants' Motion to Dismiss for Failure to Prosecute be denied as moot. (Docket no. 138). Plaintiff's instant motions seek orders denying the Defendants' Motion to Dismiss and permitting him additional time in which to respond to the Defendants' original Motion for Summary Judgment. Because the Court recommended that the Defendants' dispositive motions be denied as moot, the Court will also deny as moot Plaintiff's instant motions.

Defendants' Amended Motion to Dismiss and Motion for Summary Judgment was filed on November 25, 2009. (Docket no. 133). Under E.D. Mich. LR 7.1(d)(1)(B) the Plaintiff is required to file his response to the Amended Motion to Dismiss within twenty-one days after service of the motion. The proof of service attached to Defendants' amended motion shows that it was mailed to

the Plaintiff on November 25, 2009. The Court will allow Plaintiff additional time to file a response to the Defendants' Amended Motion to Dismiss and Motion for Summary Judgment (docket no. 133) to account for the fact that the order granting leave to file the amended motion was recently entered. The Plaintiff is therefore required to file a response entitled "Plaintiff's Response to Defendants' Amended Motion to Dismiss and Motion for Summary Judgment" on or before January 4, 2010.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Supplement Response to Defendants' Motion to Dismiss (docket no. 129) is **DENIED** as moot.

IT IS FURTHER ORDERED that Plaintiff's Motion to Proceed (docket no. 130) is **DENIED** as moot.

IT IS FURTHER ORDERED that Plaintiff should file a response entitled "Plaintiff's Response to Defendants' Amended Motion to Dismiss and Motion for Summary Judgment" on or before January 4, 2010.

NOTICE TO THE PARTIES

Pursuant to Federal Rule of Civil Procedure 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. § 636(b)(1).

Dated: December 18, 2009

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Order was served upon Martin Hagopian and Counsel of Record on this date.

Dated: December 18, 2009

s/ Lisa C. Bartlett
Case Manager